IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 1903 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/11/2002 in WP NO : 10242 OF 1992 on the file of the High Court.)

Between:

1 G.Venkat Ram Reddy S/o.G.Krishna Reddy
R/o.H.No.3052 Burtonguda,
Bolaram, Secunderabad
2 G.Panduranga Reddy S/o.G.Krishna Reddy
H.No.3052 Burtonguda,
Bolaram, Secunderabad
3 G.Sudershan Reddy S/o.G.Krishna Reddy
H.No.3052 Burtonguda,
Bolaram, Secunderabad
4 G.Jaganmohan Reddy S/o.G.Krishna Reddy
H.No.3052 Burtonguda,
Bolaram, Secunderabad
5 G.Krishna Reddy S/o.G.Narayan Reddy
H.No.9-78/2 Burtonguda,
Bolaram, Secunderabad
6 G.Gopal Reddy S/o.G.Malla Reddy
H.No.9-78/2 Burtonguda,
Bolaram, Secunderabad

..... APPELLANT(S)

AND

1 Smt.Najeebunnisa W/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar
Golconda Fort, Hyderabad
2 Smt.Afzalunnisa D/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort Hyderabad

3 Mohd. Asifur Rahman S/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar
Goclonda Fort, Hyderabad
4 Smt.Waheedunnisa D/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
5 Smt.Qamarunnisa D/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
6 Mohd Khaleel Ur Rahman S/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
7 Ahmedunnisa D/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
8 Sirajunnisa W/o.Mohd Ismail
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
9 Mohd Shafiur Rahman S/o.Gulam Jeelani
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
10 Meherunnisa W/o.Mohd Siddique
H.No.9-10-99/10 Risala Bazar,
Golconda Fort, Hyderabad
11 Jt Collector Rangareddy District at Hyderabad
12 Revenue Divisional Officer Chevella, Rangareddy District
13 G.Ramachandra Reddy not necessary to the Writ Appeal
14 G.Raghava Reddy not necessary to the Writ Appeal
15 G.Dharma Reddy not necessary to the Writ Appeal
16 G.Balwant Reddy not necessary to the Writ Appeal
17 S.Kamalamma not necessary to the Writ Appeal
18 G.Shankaramma not necessary to the Writ Appeal
19 G.Maryam @ Nagamani not necessary to the Writ Appeal
20 V.Pushpamma @ Punnamma not necessary to the Writ Appeal
21 G.Santhamma not necessary party to the Writ Appeal
22 G.Shankar Reddy not necessary party to the Writ Appeal
23 G.Bal Reddy not necessary party to the Writ Appeal
24 Soma Laxminarasamma not necessary party to the Writ Appeal

.....RESPONDENT(S)

Counsel for the Appellant: Mr K.Pratap Reddy, Senior Advocate for MR.A.ANANTHA REDDY

Counsel for the Respondent No 11 & 12: GP for Revenue

Counsel for respondents 1 to 10 : Mr P.V.Ravindra Kumar

The Court made the following judgment:

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JUDGMENT: (Per the **HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA)**

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Appellants herein are respondents 3 to 6 and 15 and 16 in W.P.No.10242 of 1992 out of which the present appeal has arisen. Respondents 1 to 10 are the writ petitioners. Respondents 11 and 12 are the official respondents whose orders were challenged in the writ petition. Respondents 13 to 24 are proforma respondents who were arrayed as respondents in the writ petition. We are referring to the parties in the appeal as they were arrayed in the writ petition.

Appeal is against the Judgment of the learned single Judge in W.P.No.10242 of 1992 dated 1.11.2002 allowing the writ petition and thereby directing the official respondents to restore possession of the land in question to the writ petitioners within a period of eight weeks from the date of receipt of copy of the order.

The writ petitioners had questioned the legality and validity of the order passed by the Joint Collector, R.R. District in File No.B3/6703/85 dated 28.4.1992 thereby confirming the order of the Revenue Divisional Officer, Chevella dated 8.5.1985 in File No.L/3501/83 with a prayer to quash and set aside the same as illegal, arbitrary and void and to direct the Revenue Divisional officer, Chevella to restore possession of the land to them.

This case has a chequered history. We are taking note of some admitted factual aspects involved in the case on the basis of which arguments were addressed before us by learned counsel appearing for the parties and we will also refer to some other aspects and points of law on which parties are at variance.

Shaik Maqdoom, the ancestor of the petitioners was granted 8 plots of cultivable land (MAQTAT) measuring approximately 495 Bighas equivalent to about 120 Acres as Maqtedar besides Inam lands in Turkapally village, now in Medchal Taluk, Ranga Reddy District. On his death, the Maqtat plots and Inam lands were allowed to be retained under the possession and enjoyment of his sons Shaik Nadeem and Ghulam Mohd. from the beginning of the year 1231 Fasli (1820 AD) by a Sanad

issued under the seal of Raja Chandulal Bahadur. The lands were being enjoyed by the Maqtedars for quite some time and later by their successors. After setting apart considerable portion of the land for cultivation, Maqtedar Sri Shaik Shah Ali by a "Qawlnama" (agreement) leased out some of the lands for a period of ten years to the predecessors of respondents 1 to 12 in the year 1928 (1338 Fasli). It is this portion of the land, which is subject matter of the present controversy. The Maqtedar died in or about 1930 AD. There was already an Inam inquiry pending about the Inam. It appears that after death of the Maqtedar, the Inam inquiry stood dismissed in default for non-appearance on 1.2.1340 Fasli. The Tahsildar received an order through Letter No. 152 dated 16.2.1340 Fasli to take the Maqta and Inam lands under Government's supervision and to report compliance in two weeks. Through Letter No.99 dated 26.4.1340 Fasli the Tahsildar reported compliance that Maqta has been taken under supervision of the Government. Zimma Patrak Havala Patti was submitted by Mukhaddam Patwari on 20th Bahman 1340 Fasli in File No.72/96/1340 Shumali.

Facts and circumstances may also be noticed under which the Inam inquiry had been ordered. One Mohammed Shah Ali and Ghulam Mohammed had filed a claim petition dated 5th Aban 1322 Fasli in the District Atraf Balda stating that the Maqta and Inam lands were granted to their ancestor Shaik Shabaz and later a fresh Sanad was granted in the name of Ghulam Mohd. and Shaik Nadeem, sons of Shaik Maqdoom under the seal of Raja Chandulal Bahadur. They claimed that they were also entitled for a share in the Inam. This petition set the ball rolling for an inquiry to be made as regards the Inam in which some shareholders of the Maqta also appeared as Uzurdars. Before final decision could be taken, the file was closed pending receipt of the orders regarding Inam inquiry of the Royal Grants situated in the Jagir villages. Later on in compliance of the orders of the District Atraf Balda through Letter No.64 dated 26.1.1329 Fasli, the parties were called for inquiry and proof about the Royal Grant. As the parties did not pursue the case, it was dismissed in default on 28.8.1332 Fasli. On submission of a review petition, the case was re-admitted but was again dismissed in default on 1.2.1340 Fasli by Order No.22. After the Maqta was taken under the supervision of the Government as aforementioned, Mohammed Shah Ali and others reappeared in the Inam Inquiry during 1345 Fasli. Their late appearance was condoned by the competent Authority and the District instructed the Division through Letter No.969 dated 3.6.1346 Falsi for early

completion of the Inam inquiry. The Division issued notification, which was published in Government Gazette No.46, dated 15.12.1346 Fasli. Statements of Maqtedars and of Purshottam Rao, Patwari of Turkapalli village were recorded from 2.2.1347 to 2.12.1347 Fasli. Copy of Sanad of Raja Chandulal Bahadur dated 2.1.1237 F. relied upon by the petitioners' predecessors was also sent for verification to Daftar Peshkari. The said office through Letter No.97 dated 26.8.1347 sent a certified copy of the Maswada Sanad dated 2.1.1337 Fasli. In the meantime, the case was transferred to the District. Daftar Peshkari, through letter No.137 dated 20.10.1347 Fasli informed the District that a copy of Maswada Sanad was already sent to the Division. At this stage, there was entry of another claimant i.e Ali Mohammed Khan, Jagirdar of Turkapally village who also filed a petition dated 2.12.1347 Fasli for impleadment as a party to the Inam Inquiry. Ahmed Yawar Jung, another shareholder of the Jagir, also filed a similar petition dated 23.8.1349 Fasli, which was declared untenable on 15.9.1350 Fasli. He filed another petition dated 16.3.1350 Fasli. Impleadment was ordered saying that impleading of Jagirdars as parties does not mean that they will be given any right to cross-examine the witnesses or to challenge the proceedings already completed. Though the Jagirdars were impeladed, they did not seriously pursue their case and their objection petition was dismissed in default. They applied for restoration but ultimately rejection order was approved by the Sadrul Maham Sarfakhas on 15.4.1358 Fasli.

In the meanwhile, the lands in question given on lease in 1338 Fasli continued to remain with the predecessors of respondents who continued to cultivate the same as Qawldars (Tenants) till 1348 Falsi, when the period of their lease expired. After the expiry of the lease period, the qawldars (lessees) applied to the Collector for continuation of their lease. Their request was rejected by the Collector, who by Letter No.904 dated 4.9.1354 Falsi instructed the Tahsildar, Medchal to conduct an open auction for eksala cultivation. Auction could not take place. Resultantly, the respondents' predecessors continued to remain in occupation. Again on instructions of the Collector, the Tahsildar, Medchal fixed the date of auction as 22nd Azur 1355 Fasli. The occupants again by petition dated 22.1.1355 Fasli approached the Collector stating that they were old occupants of the lands, had developed the lands after huge expenses and as such requested that the Maqta lands may not be auctioned and their possession may be allowed to be continued. The prayer was rejected on 25th Azur 1355 Fasli. They again submitted a

petition on the same date with the same request in the office of the Tehsil Medchal. The Tehsil authorities tried to auction the lands but the auction was postponed. Tehsil Office ordered the old occupants to continue depositing the amount of Qawl

It may also be noticed that while the Inam inquiry was pending, the Jagirdar of Turkapally village who was also participating in the said inquiry, on 13.8.1357 Fasli, granted pattas to qawldars in respect of the Maqta lands as also of the Inam lands in question on the ground that as on that day no Maqta or Maqtedar was in existence and that the maqtedars had not appeared before him for confirmation of the maqta.

After the police action and abolition of Jagirs, the Sarfekhas was merged with Diwani. The Inam inquiry file was received in Office of the Nazim Atiyat and was transferred to the Hyderabad District in October, 1951. The Maqtedars appeared in the District and the Maqta Inam was ordered to be prepared as the Inam inquiry proceedings were found to be complete. In the meanwhile, on 16.1.1952, some of the lessees/cultivators including one Sri Bega Reddy and others filed objections stating that Maqtedars are not the genuine persons and that the Inam inquiry proceedings may be taken up in their presence also as they were pattedars of the lands in question. They claimed this right on the basis of the patta granted to them by the Jagirdar on 13.8.1357 Fasli. They were allowed to pursue the case only as of Muqbirs. On 14.10.1952, some of the predecessors of the Respondents filed another application before the Collector, Hyderabad, claiming that they were the pattedars of Turkapally land, the Tahsildar, Medchal had also submitted a detailed report on 22.1.1357 Fasli, some persons were claiming succession showing themselves as Maqtedars and that the case was under consideration by the Collector.

After hearing all the parties and taking into consideration the evidence produced, the Collector decided the Inam inquiry holding that the Maqtedar was the real Maqtedar. Consequently, Maqta and Inam lands were ordered to be restored as claimed by the Maqtedars in view of the Sanad and Panchanama and “Zimma Patrak” filed by them. Bega Reddy and others challenged this order in appeal before the Nazim Atiyat, who by his order dated 10.3.1955, set aside the order of the Collector and remanded the case to the Collector with direction to examine the genuineness of sanad and confirming the mash in favour of the right persons. After hearing the parties, the Additional Collector decided the case afresh by his order-

dated 14.10.1957. As regards sanad, it was held that mere existence of the Maswada without any indication to its approval and issue cannot be considered enough to establish the existence of the Sanad. But a portion of the lands claimed comprising 29 survey number and measuring 157 Acres and 29 guntas stood confirmed as the other records, the Jagir Muntakhab, attachment proceedings, oral evidence and the settlement records established the existence of the Maqta in the Jagir village. He thus confirmed that the Maqtedars are entitled to Ac.157.29 gts.

Aggrieved by above order, the Maqtedars as well as Bega Reddy filed three appeals before the Nazim Atiyat, who, by his Decision No.170 dated 8.2.1965, allowed the appeal and the review filed by Syed Mohiuddin Ahmed and others (the predecessors of the Petitioners) and rejected the appeal filed by G. Krishna Reddy, Bega Reddy and others (the predecessors of the Respondents). He held that the available record establishes beyond doubt that the respondents were only the qawldars, as such, they cannot be accepted as pattedars of the lands in question. He also held that the Respondents status of qawldars was not changed and there the Respondents had also been admitting them to be qawldars. While allowing the appeal of the petitioners, Nazim Atiyat held that as the Sanad, Panchanama and Zimma patrak have been declared genuine, the mash claimed by the Maqtedars deserves to be confirmed in their name. The sanad contains the names of the eight Bowlies and the area of the lands under them is shown to be 4 ½ Chawar maqta and one Chavar inam lands in “Gaze-Elahi”. As such the area comes to (660) acres of land. Muntakhab was ordered to be issued accordingly with the specification of survey numbers furnished by the Maqtedars. Later Muntakhab was issued on 27.5.1965 in favour of the Maqtedars. Inam inquiry thus concluded by this order. Against this order of Nazit Atiyat, W.P.No.735 of 1965 was filed in this Court by the Respondents which was dismissed on 12.2.1970. Respondents’ appeal (W.A.No.72 of 1970) against the said decision was also dismissed with costs. SLP. (C1/IL).No.364 of 1970 was also dismissed by the Supreme Court on 3.4.1972.

As a result of the aforementioned decision of the Nazim Atiyat which was upheld by the order in W.P.No.735 of 1965 and W.A.No.72 of 1970 by this Court and by the Supreme Court in SLP, the petitioners had been making all efforts to seek restoration of possession of the land in question. According to them, the period of lease had already expired, therefore, the respondents had no right to remain in occupation of the land, more particularly, after the order of the Nazim Atiyat had

become final. Possession of the land could not be restored till date, as we will notice in later part of our judgment. In the meanwhile, subsequent development in law took place, which has led to the second limb of litigation between the parties.

The subsequent development which took place is the coming into force of The Andhra Pradesh (Telangana Area) Abolition of Inam Act, 1955 (Act No.VIII of 1955) (for short the "Inam Act"). This Act was published in Hyderabad Gazette, Extraordinary No.86 on 10.4.1954 and received the assent of the President on 16.7.1955. It was thereafter published in Hyderabad Gazette, Extraordinary No.90 on 20.7.1955. It applied to the whole area of the Telangana area of the State of Andhra Pradesh and to all inams as defined in Clause (c) of sub-section (1) of Section 2. Except for the remaining provisions – Sections 1, 2, 3, clauses (d), (g), (h) and ((i), Sections 33 to 34, section 35 to the extent to which it enables rules to be made for the purposes of the aforesaid sections, were to come into force on the date of publication of the Act in the Official Gazette. The rest of the provisions of the Act were to come into force on such date as the Government by notification in the official Gazette would appoint. Admittedly, the said date is 1st November, 1973 when rest of the provisions of the Act came into force. 20.7.1955 and 1.11.1973 are the crucial dates, which have to be kept in mind while dealing with several aspects involved in this case. Under section 4 of Inam Act, every inamdar with effect from the date of vesting is entitled to be registered as an occupant of all inam lands other than the lands mentioned in clauses (a), (b) and (c) of Section 4 of the Act. Every kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in possession of the land as on the date of vesting, subject to certain other conditions, is entitled to be registered as occupants, as provided under sections 5, 6, 7 and 8 of the Inam Act and entitled to be granted occupancy rights.

After the Inam Act came into force, being a beneficial legislation in favour cultivators of the land, the petitioners as well as respondents approached the Revenue Divisional Officer, East Division (Inam) by separate petitions for registering them as occupants. In File Nos.A/2295/75 and 2293/75, the Revenue Divisional Officer, Hyderabad East Division considered the claims of the Inamdars and the tenants for grant of occupancy rights over the land in question under sections 4 and 8 respectively of the Inam Act. The Revenue Divisional Officer held that the Respondetns were Kabiz-e-kadim and they alone are eligible for occupancy rights and accordingly granted occupancy rights in their favour and rejected the claim of

the inamdars. Against the orders of the Revenue Divisional Officer, the inamdars filed appeals in Case Nos.B3/14443/79 to B3/13453, which were dismissed by the Collector, Ranga Reddy on 4.4.1980. Against these orders of the Collector, the petitioners filed W.P.No.2171 of 1980 in this Court praying for setting aside of the orders in Case No.B3/14443/79 to B3/13453 dated 4.4.1980.

During the aforementioned proceedings also the Respondents continued to remain in actual possession of the land and the petitioners, as a result of the declaration issued in their favour, on the strength of the decision of Nazim Atiyat dated 8.2.1965, simultaneously, continued their efforts to regain possession. On 24.9.1979 the Collector, Ranga Reddy District addressed a letter to the Tahsildar, Medchal, on the application of the petitioners to take immediate steps to put the petitioners in possession of the land. On the respondents petition that pending issue of final orders under the Inams Act, all further proceedings be stopped, the order of delivery of possession was put in abeyance on 4.12.1979 by the Deputy Secretary to Government Revenue Department. Report of the Collector was called for by the State Government. On 4.3.1980, the Collector, Ranga Reddy submitted his report to the Government. The Government in its turn by its order-dated 16.7.1980, vacated the earlier orders saying that for want of jurisdiction under the Act, the stay orders have to be vacated. On 5.8.1980, again a communication was addressed by Revenue Divisional Officer, Hyderabad to the Tahsildar, Medhcal, directing him to put the petitioners in possession of the land and to fix 7th August, 1980 as the date for handing over possession to the Maqtedar and to approach the police so as to ensure that sufficient force is available on that day for the said purpose. This order could not be given effect to.

Thus, while on one side the petitioners were making all efforts to obtain orders for delivery of possession, in parallel proceedings under the provisions of the Inam Act, orders were obtained by the respondents for confirmation of their pattas in respect of the land in question under section 8 of the Act as non-protected tenants seeking grant of occupancy rights. On the petitioners challenging the said order dated 4.4.1980 of the Collector as well as the orders of the Revenue Divisional Officer, a learned single Judge of this Court allowed W.P.No.2171 of 1980 by judgment dated 22.2.1983 setting aside the impugned proceedings, with direction to re-examine the respective claims of the petitioners and the respondents afresh in the light of the observations made in the Judgment. Pursuant to the aforementioned directions, the

Revenue Divisional Officer, Chevella conducted fresh inquiry into the matter and on 8.4.1985 in File No.L/3501/83 passed fresh order declaring the respondents as **protected tenants** under section 7 of the Act and rejected the claim of the petitioners for being registered as occupants under section 4 of the Inam Act. Aggrieved by the said order, the petitioners filed appeal before the Joint Collector (Case No.B3/6703/85), which was dismissed on 28.4.1992. Aggrieved by orders of the Revenue Divisional Officer and that of the Joint Collector, the petitioners approached this Court by filing W.P.No.10242 of 1992 seeking quashing of the two orders. As already noticed, the learned single Judge, by the order impugned in this appeal, set aside the orders of the Revenue Divisional Officer as well as of that of the Joint Collector, with further direction for restoration of possession, which led the Respondents in filing the present appeal.

The primary order under challenge in the Writ petition was that of the Revenue Divisional Officer who in his order dated 8.4.1985 held that the lands in question had already been leased out to the predecessors of the respondents by the forefathers of the petitioners for a period of ten years in 1328 Fasli which period was subsequently renewed for another ten years in 1338 Fasli. The Maqta and Inam were taken over by the Government for supervision in 1340 Fasli. It was also held that though for supervision purpose Maqta and Inam were taken over by the Government, the leaseholders continued to remain in possession. After the Maqta and Inam came under the supervision of the Government, the Cultivators had on 20th Bahaman, 1340 Fasli submitted to the government a representation that they may be allowed to pay the lease amount to the Government instead to the Maqtedars. Despite expiry of the period of lease, for one reason or the other, the lessees continued to remain in actual possession of the land till coming into force of the Inam Act, paying the lease amount to the Government. The Respondents were held to be in occupation of the land even on the date of passing of the order by him. It was also held that the petitioners or the inamdars were not in possession of the land. They were also not in possession even on the date of vesting of Inam under the Inam Act or prior to the date of vesting or after the date of vesting. It was also held that inamdars had also not taken any steps to terminate the tenancy rights granted to the qawldars (tenants) under the provisions of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Act XXI of 1950) (for short 'the Tenancy Act') and had not also filed

any petition seeking resumption of the lands under section 4 of the Inam Act read with section 44 of the Tenancy Act. He held that the lands are panmakta inam lands and these inam lands (mash) are subject to the provisions of Inam Act, which provides for grant of occupancy rights in favour of various categories of persons in physical occupation of the lands under sections 4, 5, 6, 7 and 8 of the Inam Act. Though the inamdars had filed their claim under section 4 of the Inam Act for grant of occupancy rights, they were held not entitled for the same as they were not in physical possession of the land as on 20.7.1955 or on 1.11.1973. He held that the inamdars were entitled only to compensation from the Government as provided in the Inam Act. Therefore, the claim petition filed by the petitioners seeking grant of occupancy rights under section 4 of the Inam Act made on 23.9.1975 was rejected. Since the respondents were found to be in actual physical possession from 1328 Fasli onwards till the date of coming into force of the Inam Act, namely, 20th July, 1955 as well as on the date of vesting ie. 1st November, 1973 by paying land revenue to the Government in respect of the inam lands, they were held to be protected tenants entitled to grant of occupancy rights under section 7 of the Inam Act.

The Inamdars carried the matter in appeal under section 24 of the Inam Act before the Collector, Ranga Reddy district. The Joint Collector, Rangareddy in the appeal formulated the following issues for consideration

1. Whether the lands are inam lands?

2. Who was in occupation of the lands as on the date of vesting?

3. Whether the respondents can be treated as lessees/tenants of the inamdars and therefore continued to be in possession of the lands?

4. Whether the appellants are entitled for occupancy rights under section 4 of the Inam Abolition Act?

5. Whether the order of the Revenue Divisional officer in granting occupancy rights is correct?

and recorded his separate findings on each of the issues.

On the first issue it was held that there was dispute about the nature of the land and both the parties had admitted that the lands were imams lands. It was held that though at a particular point of time the respondents had claimed that the lands are patta lands, the matter stood decided by the Nazim Atiyat on 8.2.1965 in his decision No.170. The lands were held to be inam lands and subject to the provisions of Inam Abolition Act.

On Issue No.2 it was held that the respondents were put in possession as qawldars (tenants) initially for a period of ten years in 1328 Faslim, the original date of agreement. The lease period was renewed for another ten years in 1338 Falsi. The lease was thus valid till 1348 Fasli (1938 AD). There was an ekranama given by the cultivators on 20th Bahman 1340 Fasli to the Government saying that in view of the non-response to the inam succession inquiry, the Government had taken over the mash, as such, the lease amount was to be paid to the Government instead of the Maqtedars. The Collector had taken a decision that the lease should not be extended further in favour of the predecessors of the respondents but it should be leased out on “eksala” basis by holding an open auction. But the open auction for eksala cultivation did not materialise and the predecessors of the respondents continued to be in possession of the land. The Joint Collector held that there was evidence on record to show that the predecessors of respondents were never dispossessed from the land in accordance with law or otherwise at any stage. In the absence of proceedings taken out for evicting the respondents from the land, the Joint Collector held that the respondents have to be treated as continuing in occupation of the land as on the date of vesting, whether it be taken as 20.7.1955 or 1.11.1973. Objection of the petitioners that the respondents were unauthorised occupants and will not be entitled to occupancy rights with reference to the provisions of the Tenancy Act was turned down holding that the lands did not come under any of the categories contained in section 102 of the Tenancy Act.

With respect to issue No.3 the Joint Collector held that as along as the respondents were not dispossessed, they have to be treated as occupants and that the tenancy certificates had already been given to the respondents, which had not been

challenged by the petitioners.

On issue No.4 it was held that the petitioners were not entitled for grant of occupancy rights under section 4 of the Act since they were not in possession of the land in question

The Joint Collector thus dismissed the appeal of the petitioners. The petitioners aggrieved by the same, filed the Writ Petition No.10242 of 1992. The learned single Judge by the orders impugned in this appeal did take notice of the findings recorded by the two authorities as well as of various proceedings and came to the conclusion that the battle between the parties is not of recent origin but had been in progress for the last 90 to 95 years. According to him, the Atiyat Court had clearly held that the Jagirdar had no jurisdiction to grant patta in favour of the respondents. Sanad, Panchanama and zimma patrak had been declared to be genuine and it had conclusively been held that the claim of the Maqtedars (the petitioners) deserves to be confirmed and accordingly direction was issued by the Atiyat Court that muntakhab may be issued in favour of the petitioners. This order was challenged in W.P.No.735 of 1965, which was dismissed. Writ Appeal and SLP filed by the respondents were also dismissed. Despite the fact that proceedings of Atiyat Court had attained finality, the petitioners had unnecessarily been dragged on by the respondents to various proceedings adopting dilatory tactics on one pretext or the other. The learned single Judge thus held that even if the respondents were found to be in actual possession of the land, such possession cannot be termed as lawful one in the light of the findings recorded by the Atiyat Court. The respondents having no right to hold the land, which ought to have been restored to the petitioners, neither the Revenue Divisional Officer nor the Joint Collector discharged their statutory duties in accordance with law and disposed of the application of the petitioners for grant of occupancy rights in a cursory manner. The Orders passed by Revenue Divisional Officer and that of the Joint Collector were held to be suffering from legal infirmity and error of jurisdiction and accordingly he allowed the Writ Petition and set aside the two orders. Concluding that in view of the findings of the Atiyat Court that the petitioners were entitled to maqta and inam lands, the petitioners were held entitled to grant of occupancy rights under section 4 of he Act and also for restoration of the land and thus directed that possession of the lands in question be restored to the petitioners within a period of eights week from the date of

receipt of a copy of the order.

This order of the learned single Judge is under challenge by respondents in this appeal on number of grounds. The petitioners have vehemently opposed the appeal. The main question involved for our consideration in the appeal is that who among the petitioners or the respondents entitled to get occupancy rights under the provisions of the Act.

As noticed above, the controversy lies in a very narrow compass. Facts are not in dispute. Undisputed facts are that the petitioners are the inamdars. Lands are inam lands. Though initially the inamdars were in actual possession of land in question, but the land in question was given on lease to the predecessors of the respondents in 1338 Fasli (1928 AD). In the findings recorded by the primary authority, he assumed that originally the lands were given on lease to the predecessors of the respondents in 1328 Fasli for a period of ten years and on expiry of the said period of ten years, the lease period was renewed in 1338 Fasli for a further period of ten years. It was thus erroneous on the part of the Revenue Division Officer to have assumed that the lease initially was granted in 1328 Fasli, which was neither the case of the qawldars nor that of the inamdars, and, when the order of Revenue Divisional Officer was challenged in the Memorandum of of Appeal, it was specifically stated that this assumption on the part of the Revenue Divisional officer was erroneous and contrary to the record. In appeal, the Joint Collector did not deal with this aspect but held that the land was given on lease on the basis of agreement (qawl) to the qawldars in 1338 Fasli corresponding to 1928 AD for a period of ten years on the basis of qawlnama. This is the correct position as is reflected to in the record and is also an admitted position by the parties that the land in question for the first time was given to the predecessors of respondent on lease in the year 1338 Fasli (1928 AD) for a period of ten years.

The inam inquiry was already pending and while the land was in actual physical possession of respondents as lessees, there was non-response to the inquiry proceedings. Thus, supervision of the Inam was taken over by the Government in 1930 AD (1340 Fasli). Irrespective of that, the respondents continued to remain in occupation of the land. After expiry of the lease, the request of the respondents to continue the lease was rejected by the Collector, who passed orders

to conduct an open auction and to give the lands on lease on eksala basis. But the same could not materialise. The respondents continued to be in occupation of the land in question continuously. There is neither any material on record, nor it is the case of the petitioners that the respondents were ever physically evicted from the land. On the date of coming into force of the Act i.e., 20.7.1955 and the date of vesting ie 1.11.1973 also, the respondents were in actual physical possession of the land. The petitioners were not in possession of the land. The earlier limb of litigation was as regards the inam inquiry. In the Inam inquiry, the Jagirdar, the predecessors-in-interest of the petitioners (inamdars and maktedars) and the predecessors-in-interest of the Respondens (Qawldars) had participated. The Inam inquiry concluded by an order of the Nazim Atiyat, Revenue Department by his decision No.170 dated 8.2.1965. The said decision affirmed the rights of the petitioners as inamdars declaring the Sanad, Panchanama and Zimma patrak to be genuine. Mash claimed by them was held to be liable for confirmation in their name. Nazim Atiyat did not pass any order for restoration of possession to the petitioners but passed an order for confirmation of mash claimed by Maqtedars in their name. In the same decision, the respondents were held to be in occupation of the land as qawldars (tenants) and it was held that they cannot be registered as pattadars of the land on the ground that they had incurred huge expenses for betterment of land inasmuch as under the qawlnama of 1338 Fasli lands had been given to them for development. In separate independent proceedings thereafter the petitioners wanted restoration of possession. Orders were passed for restoration of possession, but possession was never restored to them.

In the aforementioned background, learned counsel for the petitioners argued that mere possession is not relevant or sufficient. Possession must be relatable to a lawful title in case the respondents have to succeed for being granted occupancy rights. After the decision of the Atiyat Court, the right of the respondents to retain possession came to an end. Even if they continued to remain in occupation thereafter, such possession must be treated as illegal and they should be treated as continuing in occupation of the land unauthorisedly. He further submitted that the respondents have been shifting their stand from time to time; while on one hand, it was contended that occupancy rights were granted in their favour under section 8 of the Act, on the other hand, after decision in W.P.No.2171 of 1980, it was their case

that occupancy rights be granted in their favour under section 7 of the Act. Learned counsel submitted that the respondents are asserting to be deemed tenants or protected tenants. There is substantial difference between a “protected tenant” and a “deemed tenant” and an “asami shikmi”. He also referred to Sections 37 and 102 of the Tenancy Act saying that neither the respondents can be treated as protected tenants nor the provisions of Tenancy Act apply to the land in question. Thus, the respondents are not entitled to occupancy rights. Learned single Judge was justified in rejecting their claim and the impugned order is not liable to be interfered with.

Learned counsel for the respondents on the other hand submitted that the object with which the Inam Abolition Act, 1955 was brought into statute book was to abolish all imams other than village service imams, imams held by religious and charitable institutions. However, retention by the inamdars as well as by the tenants of land respectively under their personal cultivation was allowed to the extent mentioned under the Act. The Inam Act also provided for payment of adequate compensation for the lands resumed from the inamdars and the tenants. The Inam Act also makes provision for registration of inamdars as occupants and other four categories of persons as occupants, namely, (1) Kabiz-e-kadim, (2) permanent tenant; (3) protected tenants and (4) non-protected tenants. Learned counsel for the respondents submitted that since the inamdars were not in physical occupation of the land as on the date of vesting, they had no right to seek registration. He thus submitted that whether the case of respondents falls under section 5 or under any other provisions of Inam Act, since the respondents were in continuous occupation of the land, they were rightly registered as occupants, whether such registration be treated as Kabiz-e-kadim or as permanent tenant, protected tenant or non-protected tenant. Since the petitioners are not entitled to be shown as occupants under the provisions of the Inam Act, the only right they are having is to get compensation under the provisions of the said Act which alone was the scope of the inquiry pursuant to which orders have been passed. They have no right to raise any objection for the respondents being registered as occupants because of their continuous physical possession of the land in question.

Having considered the submissions at the Bar and having gone through the record and the order impugned in this appeal, we are of the view that the approach of the learned single Judge in dealing with the question involved is erroneous. Learned single Judge proceeded on the basis that as the order of Atiyat Court had

become final, therefore, it had to be given effect to irrespective of the coming into force of the Inam Act, which is totally an erroneous approach. The learned Judge failed to take into consideration the developments which have happened i.e. coming into force of the beneficial legislation i.e. Abolition of Inams Act. The Act is a beneficial legislation. 20th July, 1955 is the date on which all inams to which the Act apply stood vested in the State whereas under the Act the relevant date for obtaining occupancy rights is 1st November, 1973 in the State of Andhra Pradesh. Inamdars or tenants in possession of the land as on 1st November, 1973 became entitled to seek grant of occupancy rights. Irrespective of the order passed by the Nazim Atiyat, the question of the grant of occupancy rights under Sections 4 to 8 has to be decided by the Collector holding an inquiry as provided under section 10 of the Inam Act. Notwithstanding abolition of the inams on 20.7.1955 and vesting of the imams in the State, right of the inamdars or the tenants are not extinguished provided they were in possession of the land as on the relevant date, namely, 1st November, 1973, on which date the rest of the provisions of the Act were brought into force.

A Division Bench of this Court in **B. RAMENDER REDDY AND OTHERS V. THE DISTRICT COLLECTOR, HYFDERRABAD DISTRICT AND OTHERS** held that right to get occupancy rights is not co-related to the vesting of inams in the Government. Therefore, even though all the inams vested in State as on 20th July, 1955, in case the inamdars or various types of persons mentioned in sections 5, 6, 7 and 8 were in possession of the land as on 1.11.1973, they would be entitled to get occupancy rights under the Act.

Section 4 of the Inam Act provides that every inamdar shall with effect from the date of vesting be entitled to be registered as an occupant of all inam lands other than those lands which are mentioned in Clauses (a), (b) and (c) of sub-section (1) of section 4, subject to further condition that immediately before the date of vesting the said lands were under his personal cultivation. Clause (b) of sub-section (1) mention the lands in respect of which any person is entitled to be registered under Sections 5, 6, 7 and 8 of the Inam Act. As noticed above, the petitioners were not in occupation of the land in question immediately before the date of vesting which is a finding of fact recorded by all the authorities. In those proceedings we are concerned only with possession of the land in question. There is no challenge to the findings of fact recorded by both the authorities in the writ petition, therefore, insofar as the

petitioners claim for being registered as occupants under section 4 of the Act is concerned, the same has become final. We are of the view that on the basis of the material on record, the claim of the petitioners was rightly negatived by the authorities.

Section 5 of the Act provides for registration of Kabiz-e-kadim as occupant. The term Kabiz-e-kadim has been defined under Clause (e) of sub-section (1) of Section 2 to mean the holder of inam lands, other than an inamdar, who has been in possession of such land at the time of the grant of inam or has been in continuous possession of such land for not less than twelve years before the date of vesting and who pays to the inamdar only the land revenue.

Admittedly, the respondents are persons other than the inamdars and have been in possession of land not at the time of grant of inam but have been continuously in possession for a period of not less than twelve years before the date of vesting. But they were not paying to the inamdars, during the said period, any amount. Section 5 of the Act thus does not apply to the case of the respondents. As regards payment of amount, we will deal with the same at a later stage.

Admittedly, the respondents are not the permanent tenants. Section 6 deals with the permanent tenants as occupants. Thus, the respondents would fall either under the category of 'protected tenants' whose registration is provided as occupants under Section 7 or under the category as 'non-protected tenants' for whom registration is provided as occupants under section 8 of the Act. Under Clause (j) of sub-section (1) of Section 2 of Inam Act, 'protected tenant' means the protected tenant as defined in the Hyderabad Tenancy and Agricultural Lands Act, 1950. Under Clause (g) of sub-section (1) of Section 2, "non-protected tenant" is defined to mean a tenant other than a permanent tenant or a protected tenant. Clause (r) of sub-section (1) of Section 2 of Tenancy Act defines "protected" to mean a person who is deemed to be protected under the provisions of the said Act. Chapter 4 of the Tenancy Act deals with the protected tenants. Section 34 of the Tenancy Act enumerates classes of persons, who shall be deemed to be protected tenants. Section 34 reads:-

34. Protected Tenants: (1) A person shall, subject to the provisions of sub-

sections (2) and (3), be deemed to be a Protected Tenant in respect of land if he--

a. has held such land as a tenant continuously—

i. for the period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive) or

ii. for a period of not less than six years immediately preceding the 1st day of January, 1948, or

iii. for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th October, 1943), and completed before the commencement of this Act, and

b. has cultivated such land personally during such period:

Provided that where the landholder is a minor or is serving in the Naval, Military or Air Forces in India, the tenant shall not be deemed to be a protected tenant if before the expiration of one year from the date on which the minor attains majority or the landholder ceases to serve in the said forces, the landholder gives three months' notice in writing intimating his decision to terminate the tenancy if in good faith he requires the land to cultivate personally:

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability the tenant shall not be deemed to be a protected tenant if before the expiry of one year from the death of the land-holder, the person who succeeds to the land gives three months' notice in writing intimating his decision to terminate the tenancy if in good faith he requires the land to cultivate personally.

Explanation:- Where the land is held under more than one joint land-holders the last two provisos shall not apply unless such landholders are subject to a disability specified in the said provisos.

Explanation I:- if the person who held such land as a tenant on the date of expiry of any to the three qualifying periods mentioned in clause (a) came to hold the same by inheritance or succession from another person who so held the land if he has held such land as tenant and is an heir to such other person, the period during which such other person held such land as a tenant shall be included in calculating such qualifying period.

Explanation II*:-* If the person who held such land as a tenant on the date of expiry of any of the three qualifying periods mentioned in clause (a), held as a tenant at any time within six years before the said date from the same landholder in the same village any other land which he cultivated personally, the period during which he held such other land shall be included in calculating such qualifying period.

Explanation III:- Where any land is held by two or more persons jointly as tenants all such persons shall, if any of them cultivated and continues to cultivate such land personally and, if the other conditions specified in this section are fulfilled, be

deemed to be protected tenants in respect of such land.

(2) Where more than one person would be entitled under sub-section (1) to be deemed to be protected tenant in respect of any land, then, notwithstanding anything contained in that sub-section, the only one of such persons entitled to be so deemed shall be –

a. the person whose qualifying period is the period specified in sub-clause (1) of clause (a) of that sub-section; or

b. if there is no such person, the person whose qualifying period is the period specified in sub-clause (2) of that clause.

(3) A person who at the commencement of this Act is no longer in possession of land in respect of which he is deemed under sub-section (1) to be a protected tenant shall notwithstanding anything contained in that sub-section, not be deemed to be a protected tenant in respect of such land if –

a. he was evicted from such land in pursuance of a decree or order of a competent Court, or

b. such land is being cultivated personally by the landholder for at least one year before the commencement of this Act, or after the land was surrendered to the landholder by the tenant, or

c. a permanent structure has been built by the landholder on such land, or

d. such land has been permanently diverted by the landlord to non-agricultural uses.

Explanation:- In sub-secs. (2) (3) of this section and in Secs. 35, 36 and 37 references to a person include references to such two or more persons as are referred to in Explanation III to sub-section (1).

A bare reading of Section 34 suggests that a person holding land as tenant continuously for period not less than six years between 1342 Fasli and 1352 Fasli (both years inclusive) or for a period of not less than six years immediately preceding the 1st day of January, 1948 or for a period of not less than six years

commencing not earlier than the 1st day of the Fasli year 1353 F and completed before the commencement of the said Act and that he had cultivated the lands personally during the said period would be deemed to be a protected tenant. When there is no person available to be a deemed **protected tenant** under Section 34 of the Act at the commencement of the Act, on the expiration of one year, any other person, who, at the commencement of the Act, held the land as tenant, subject to other conditions, would be deemed to be a **protected tenant** under section 37 of the Tenancy Act which reads thus:

> **Persons not entitled under Section 34 deemed in certain circumstances to be protected tenants**: (1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under section 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the rescrubbed form. to the Tahsildar for a declaration that such person is no a protected tenant.

The findings recorded in the orders of the two authorities are that till the year 1338 Fasli (1928 AD) the land in question was in occupation and enjoyment of the inamdar. It was given on lease to the predecessor of Respondents in the year 1338 Fasli. Within two years of the grant of lease by the maqtedars the management of the property was taken over by the Government. The possession of the land remained with the lessees. The lease period was to expire in 1348 Fasli. Therefore, admittedly, for a period of ten years, the predecessors of the respondents were lawful tenants liable to pay rent under the qawlnama. Thus, they admittedly held the land as tenants continuously for a period of not less than six years between 1342 Fasli and 1348 Fasli (both years inclusive). In terms of Section 34 of Tenancy Act such person would fall in to the category of **protected tenants** entitled to be registered under Section 7 of the Inam Act as occupants. And resultantly the first and second respondents rightly took decision with which no interference was called for in the writ petition. The learned single Judge lost sight of this important and relevant aspect and did not go into the question as to whether on coming into force of the Act, the respondents who were in the category of occupants referred to under Section 7 of the Act and had not been evicted from the land were entitled to be registered as occupants under the provisions of the Act. Admittedly, the occupancy certificates had been granted in their favour. The same were not under challenge in any

proceedings by the petitioners.

As regards the Jagirs and its nature, the Supreme Court had an occasion to deal with the nature of inam in the former State of Hyderabad in **RAJA RAMESHWASR RAO AND ANOTEHR v. RAJA GVOIND RAO** wherein it was held that that where a grant is continued in a family from generation to generation and each grantee holds it for his life the limitation against any one grantee starts to run from the date his title arose. It was also held that the grant of a jagir is only for lifetime of the grantee and that his son, when he gets the jagir gets a fresh grant. This decision was reiterated in subsequent decision by the Supreme Court in SIKANDEER **JEHAN BEGUM AND ANTOEHR v. ANDHRA PRADESH STATE GOVERNMENT AND OTHERS** wherein it was held that even under the circulars issued by the Nizam for holding enquiries into the question of succession to Jagirs, the position was that jagirs were not heritable and on the death of the Jagirdar, on principle and in theory, it was always a case of resumption and regrant. In the instant case when the Jagirdar expired after about two years of grant of lease in favour of respondents, inam inquiry, which was already pending, was rightly continued and came to an end much later in point of time of the date of expiry of the lease. When inquiry was concluded and order was passed in favour of the petitioners it was a re-grant in their favour. Before this re-grant all imams stood vested in the Government. The respondents by virtue of their continuous occupation and non-ejectment from land on coming into force of the Act, acquired the status of protected tenants having remained in occupation of the land as tenants for a period not less than six years between 1342 Fasli and 1352 Fasli (both years inclusive). They were already in occupation of the land as tenants in the year 1342 Fasli by virtue of the lease and were also in occupation in 1348 Fasli and continued to remain in occupation thereafter also.

Resultantly, we hold that the writ petition filed by the petitioners had no force and was liable to be dismissed. Learned single Judge erred in allowing the writ petition.

At this stage we may take notice of an important event, which has happened during the pendency of the Appeal. W.A.M.P.No.3940 of 2003 was filed jointly by appellants 5 and 6 and respondents 1 to 10. The said application was ordered on 5.1.2004 and the compromise arrived at between the parties was taken on record further ordering that it will be taken due care of at the time of hearing of the main

appeal. Under the terms of compromise, respondents 1 to 10 herein who are the writ petitioners withdrew their claim against appellants 5 and 6 with respect to an extent of Ac.47.22 guntas in Survey Nos.62, 63, 64, 65, 66, 67, 86 and 87 situated at Turkapally village, Malkajgiri Mandal, Ranga Reddy District, thereby, confirming the patta certificates issued by the Revenue Divisional Officer by his order dated: 28.5.1985, vide proceedings No.L/3501/1983. Since the compromise has already been recorded, the same will not either way affect the rights of the parties since we have already held that writ petition itself was liable to be dismissed. We are not disturbing the said compromise.

Appeal is accordingly allowed. The impugned order of the learned single Judge is set aside. Writ Petition of the petitioners who are respondents in this appeal is hereby dismissed leaving the parties to bear their respective costs.

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Devinder Gupta, CJ

_____ **B. Seshasayana Reddy, J**

29th March, 2005

LR Copy to be marked: Yes

Vtv/vr

One fair copy to Hon'ble Sri Devinder Gupta, the Chief Justice, High Court of A.P., Hyderabad (for Hisl Lordship's kind perusal)

One fair copy to Hon'ble Sri Justice B.Seshasayana Reddy (for His Lordship's kind perusal)

To

1. The Joint Collector, Rangareddy district, Hyderabad.
2. The Chief Judge, CC, Hyderabad.
3. The Revenue Divisional Officer, Chevella, Rangareddy district.
4. The GP for Revenue, High Court Buildings, Hyderabad (OUT)
5. The Under Secretary, Ministry of Law, Justice and Company Affairs, Union of India, New Delhi.
6. The Secretary, A.P. High Court Bar Association, High Court Buildings, Hyderabad.
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